

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEFFREY ELKO,)	CASE NO. 1: 07 CV 1409
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	ORDER ADOPTING
)	MAGISTRATE'S REPORT AND
)	RECOMMENDATION
STUART HUDSON, WARDEN,)	
)	
Respondent.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge David S. Perelman. The Report and Recommendation (ECF # 22), issued on February 22, 2008 is hereby ADOPTED by this Court. Petitioner filed this action requesting a writ of habeus corpus pursuant to 28 U.S.C. §2254, challenging the constitutionality of two convictions. In April of 2003, Petitioner was convicted by a jury on one count of improperly discharging a firearm at or into a habitation or school, and three counts of felonious assault, each with firearm specifications. He was sentenced to a total of five years on these convictions. In May of 2003, Petitioner was convicted, after pleading guilty to one count of kidnapping, two counts of felonious assault, and one count of sexual battery, and was sentenced to two six year terms of incarceration, to be served concurrently with each other, and with the five year sentence imposed for his April, 2003 convictions.

The Magistrate Judge recommended that the Petitioner's request be denied as untimely. The Magistrate correctly determined that the one year period for filing a habeus corpus petition under 28 U.S.C. §2244 began to run on June 30, 2005, the day after the state supreme court dismissed the petitioner's appeal from the lower court's denial of his motion to withdraw his plea. This petition was filed on May 7, 2007, more than ten months after the filing period had expired. As there were no events tolling the limitations period, and as equitable tolling is not warranted in this case, the petition was not timely filed and should be dismissed. No timely objections have been filed.

The Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: March 13, 2008